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Untangling Disinformation

# As the pandemic winds down, anti-vaccine activists are building a legal network

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By Lisa Hagen

Steve Kirsch, a tech entrepreneur turned anti-vaccine activist, at a conference in Atlanta for future COVID and vaccine-related litigation that he helped organize and fund.
*Lisa Hagen/NPR*

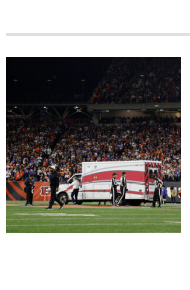
Steve Kirsch is a tech entrepreneur who made hundreds of millions of dollars after founding an early search engine and helping invent the optical computer mouse.

Recently, he stood before a gathering of more than 250 lawyers in Atlanta while wearing a custom black T-shirt designed like a dictionary entry for the phrase "misinformation superspreader."

"Our definition is it's someone who's basically pointing out the truth and it just happens to disagree with the mainstream narrative we're known as misinformation spreaders, because what they're trying to do is they're trying to control the narrative," Kirsch told NPR.

By "they," Kirsch means a network of pharmaceutical companies, governments, doctors and journalists that he argues are covering up a pandemic-driven plot to poison the world for profit.

The scientific consensus shows COVID vaccines are safe and significantly reduce the chances of death or serious illness. While many Americans may share a distrust of pharmaceutical companies and healthcare systems, there is no evidence of the kind of conspiracy alleged in these circles.



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In recent years, Kirsch has become an increasingly vocal and generous funder of the anti-vaccine movement. He helped organize and fund the conference to map out strategies for anti-vaccine and COVID-19-focused litigation as the pandemic winds down.

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Their proposed targets include hospitals, school systems, medical licensing boards and, the holy grail, pharmaceutical companies that make vaccines.

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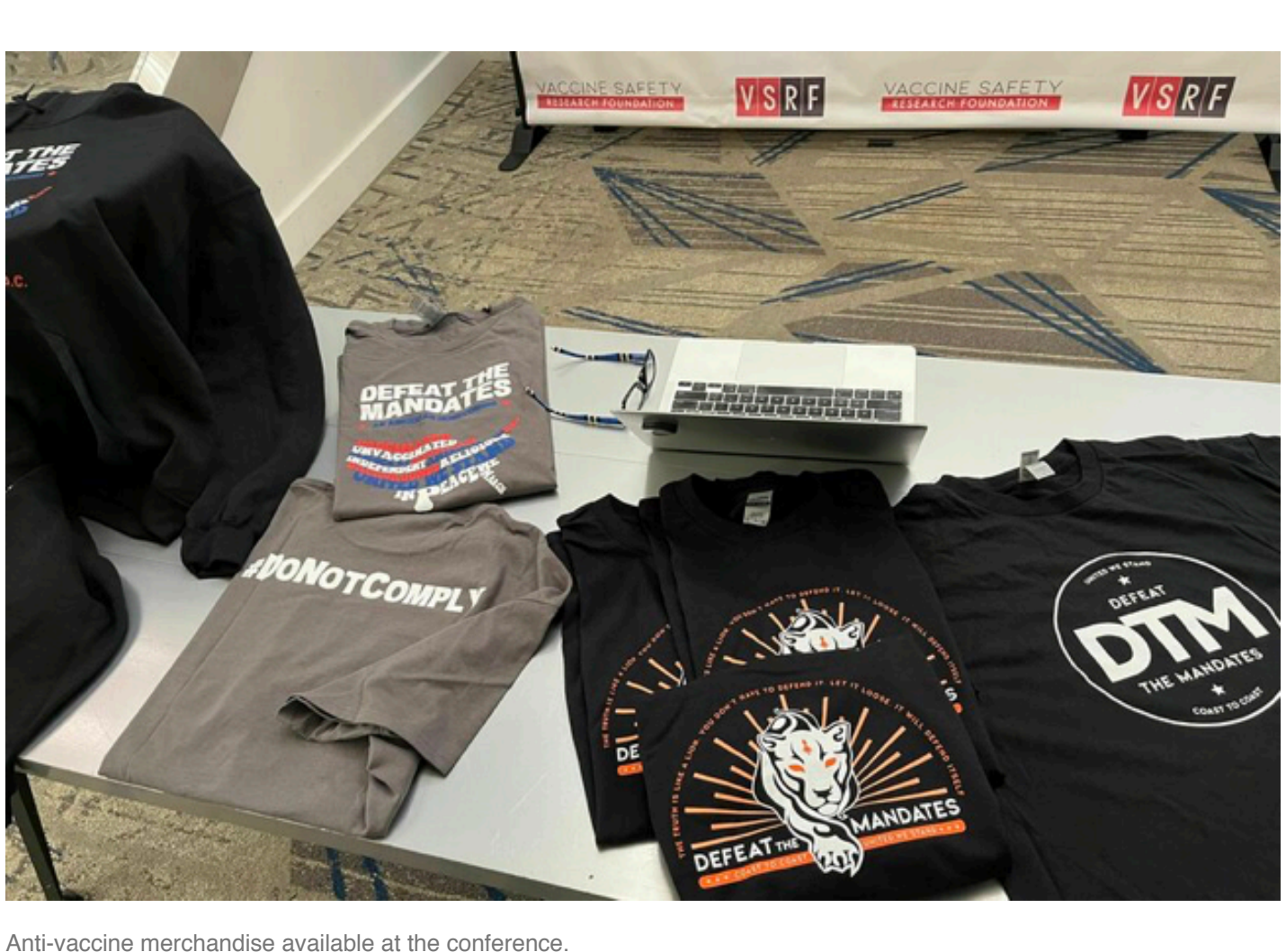
"My goal is to expose every single one of these a**holes," Kirsch told the audience, to uproarious applause.

The lawyers met as the anti-vaccine movement is at a crossroads. The COVID-19 pandemic brought in new energy and supporters but is fading from public life. On May 11, the federal government's public health emergency will expire. To keep the cause alive, some in the movement are trying to build up a legal arm.



Anti-vaccine merchandise available at the conference.
*Lisa Hagen/NPR*

The legal conference drew a mix of people who've advocated against vaccines for years before the pandemic, and those, like Kirsch, who are more recent converts. He said he actually got two Moderna shots when COVID vaccines became available.

Kirsch's path to the conference started with an effort to find treatments for COVID.

## From funding research to organizing lawyers

"When the pandemic hit, I put in a million dollars of my own money and raised another $5 million dollars. We started the COVID 19 Early Treatment Fund and we started funding early treatments," said Kirsch.

The goal was to run trials on existing treatments that might help combat the virus. Reporting by MIT's Technology Review found the project had brought together highly respected biologists and drug researchers who believed in the work. But when some of the research seemed to run into dead ends, Kirsch reportedly began to clash with the scientists he was funding.

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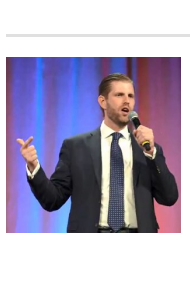
"If the data is is is bad and doesn't make sense and the study was badly done, then I have a right to reject it," said Kirsch. "And so the point is that if a study is well done, you'll see that I will like the study."

Kirsch has a tendency to offer large sums of money to anyone willing to debate his assertions.

"But they won't do that. They won't get into any discussion with me because they don't want to answer a single question," Kirsch said.

Jeffrey Morris has tried to engage with Kirsch for years. In his spare time, the professor of biostatistics at the University of Pennsylvania has gone line by line through some of Kirsch's claims, providing answers, context and explanations. They once had a long conversation over Zoom.

"And it was an interesting discussion, you know, because he admitted that he was not a scientist and didn't think like one. And so I was trying to connect with him and help him understand the leaps he was making in his arguments to get him to think more carefully. Because I could tell he was someone with a lot of energy and passion on the issue," said Morris, who has watched Kirsch pull millions of views on some of his COVID vaccine content.



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When someone makes a dramatic claim that vaccines are killing millions, it's their burden to show the evidence, said Morris, not the other way around.

"They're presuming that they have the entitlement that what they're saying can be presumed to be true without them demonstrating rigorously that it's true, and that it is the responsibility of society and the scientific community to prove them wrong. And if they fail to prove them wrong, or if they don't show up, then they're really offended. And then to them, that just proves their guilt. It proves the cover up," he said.

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As government cover ups became a regular talking point for Kirsch, the researchers abandoned his early treatment project. Two years and $2 million later, he's hoping to organize a sustained legal insurgency against public health agencies, drug manufacturers, hospitals and schools.

Attorney Pete Serano traveled from Washington State, where he represents three doctors accused of spreading false statements about COVID-19 and said finding a supportive community of lawyers and experts he can call for help is "monumental."

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"You know, it really felt like it was me against the world, even though there were probably maybe half a dozen to a dozen lawyers in Washington fighting. It still feels - it's extremely lonely. It's extremely difficult," said Serano.

Conference organizers asked reporters not to record entire presentations. But one thing Serano and other attendees heard again and again from speakers: In this room, you're among heroes.

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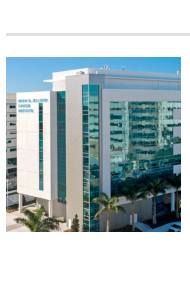
"There are people who are tremendously intellectually talented and gifted in so many ways who are using those talents to fight for your rights, to fight for my rights," said Serano.

## Creating a new body of law

The fights include everything from suing educators who enforced mask mandates, to demanding vaccination status be made a protected class, like race or sexual orientation. Thousands of lawsuits pushing back against public health measures have been filed since the pandemic.

The goal of this conference is to bring lawyers behind these suits together, study all that legal spaghetti on the wall and analyze what has and hasn't worked. They mean to probe for weak points in the law, build a network of experts and plaintiffs, and, they hope, inspire new laws.



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Conference organizers like attorney Warner Mendenhall want to ensure a steady supply of lawyers who see opportunity, whether ideologically aligned with the anti-vaccine movement or not.

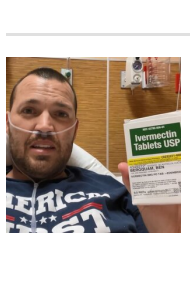
"I hate to say this but greed is good in this instance," said Mendenhall on a webinar promoting the event. "So if lawyers can see that they can get rich, and we're trying to prove that you can - we haven't yet, but we will - it'll bring lawyers in simply for the money."

Fears about vaccines are not new. The current legal structure around vaccines is the result of a wave of lawsuits in the 1970s and 80s. It tries to balance individual freedom with public health needs, according to Anjali Deshmukh, a pediatrician and professor of administrative law at Georgia State University.

"It's not only about protecting us, but it's about protecting our community. And that's a different calculus, where it's now within the government's interests to make sure that these diseases are not spreading," Deshmukh said.

But the law is not fixed, she added, and well-funded, well-organized groups can be a powerful force.

"And I think like we saw with *Roe v Wade*, you had a case that was passed 50 years ago and then had various chips away at it until the ground crumbled," said Deshmukh.



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The civil rights movement, organized labor and women's rights advocates have also relied on a potent mix of court battles and ground campaigns to sway public sentiment.

"The court of public opinion is more important than I think we give credit to in both law and medicine. We can have all the science in the world, we can have laws that make sense, but laws change. Science is not always convincing when you're coming from a place of fear," said Deshmukh.

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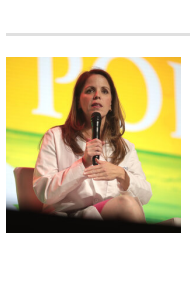
Cases don't even have to succeed in court to have an impact, Deshmukh said. Influencers and headlines can frame settlements, technical legal outcomes or compelling, emotional testimony as victories for one side or another. She said these lawsuits also come at a time when the Supreme Court is weakening the powers of many regulators.

With the COVID national emergency order set to end, keeping COVID-related grievances alive in the courts may also help sustain the larger movement against vaccines.



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Serano, the lawyer from Washington State, says the kinds of cases that brought him here may become the bulk of his work for years.

"I plan on being that 80 year old guy talking about what it was like in the 2020s and COVID 19 and telling some young whippersnapper lawyer about how we did it back when," he said.

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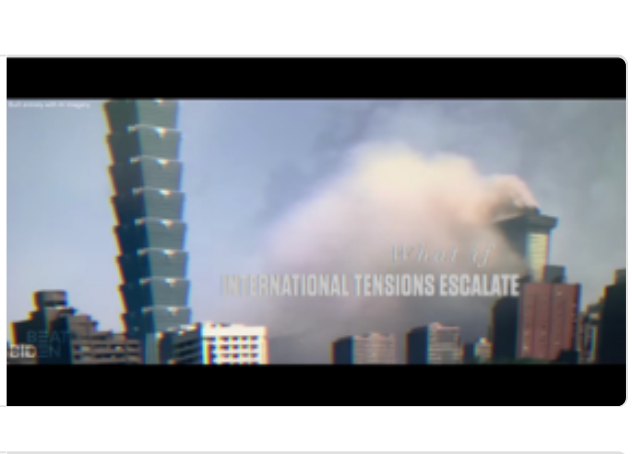

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